

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DANIEL GARCIA, a/k/a DANIEL GARCIA :
FERNANDO, a/k/a JOSE, a/k/a AHMED, a/k/a :
MOHAMED, a/k/a ALMIGHTY BY ALL ONE, :
:

Plaintiff, :

-against- :

JASON THOMAS, OMAR GUERRA, BEETHOVEN :
JOSEPH, and KEITH BLATZ, :

Defendants. :
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MEMORANDUM DECISION
AND ORDER

21 Civ. 636 (GBD) (BCM)

GEORGE B. DANIELS, United States District Judge:

Plaintiff, *pro se*, brings this action against Defendants, Rikers Island (“Rikers”) staff and administrators, Correction Officer (“C.O.”) Thomas, Captain Omar Guerra, C.O. Beethoven Joseph, and Assistant Ward Deputy Keith Blatz (collectively, “Defendants”), alleging that Defendants failed to provide him with medical care during an incident at Rikers. (Compl., ECF No. 1.) Defendants moved to dismiss the complaint for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) (“Fed. R. Civ. P. 41(b)”) (ECF No. 53.) Before this Court is Magistrate Judge Barbara C. Moses’s April 25, 2023 Report and Recommendation (“Report”), ECF No. 57)), recommending that this Court dismiss this action without prejudice. Having reviewed the Report, this Court ADOPTS the Report in full.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

On January 21, 2021 Plaintiff commenced this action, alleging that the Defendants failed to provide him with medical care before and after he attempted to commit suicide by hanging on

¹ The relevant factual and procedural background is set forth in greater detail in the Report and is incorporated by reference herein.

December 27, 2020. (Compl. at 4.) Plaintiff also alleged that C.O. Thomas hit Plaintiff in the back of his head during the suicide attempt. (*Id.*)

Plaintiff has made no contact with this Court or with defense counsel since January 18, 2022, and February 22, 2022, respectively. (Report at 1.) Since that time, Plaintiff has failed to comply with two court orders and has failed to appear at two hearings. (*Id.* at 3–4.) In addition, Plaintiff is no longer in custody at Rikers, does not appear to live at the address he provided this Court upon leaving custody, and has not provided an alternate address.²

On February 6, 2023, Defendants filed the instant motion to dismiss Plaintiff’s action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Plaintiff failed to respond to Defendants’ motion. On April 25, 2023, Magistrate Judge Moses published her Report, in which she advised the parties that failure to file timely objections would constitute a waiver and preclude appellate review. (*Id.* at 9.) No objections have been filed.

II. DEFENDANTS’ MOTION TO DISMISS FOR FAILURE TO PROSECUTE IS GRANTED

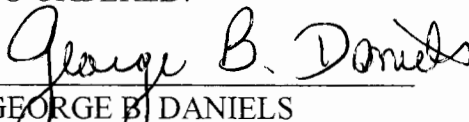
A court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth in a magistrate judge’s report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge’s report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present only when “upon review of the entire record, [the court is] ‘left with the definite and firm conviction that a mistake has been committed.’” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

² Plaintiff filed a change-of-address form on January 13, 2022, providing an updated address and a telephone number. (ECF No. 37.) Defendants’ notice of motion was served on Plaintiff at that address. (ECF No. 53, at 1.) This Court’s orders have also been mailed to Plaintiff at that address, but some of those have been returned as undeliverable. (*See* Report at 5.) As Magistrate Judge Moses noted in her Report, there is no other address known to this Court to which to email its Orders.

Having reviewed the Report for clear error and finding none, this Court ADOPTS the Report in full. As Magistrate Judge Moses outlined in her Report, Plaintiff has not participated in this action in over a year, has failed to appear at two court hearings, and has missed two filing deadlines for opposing Defendants' motion. (Report at 6.) Plaintiff has had ample time to respond regarding why this case should not be dismissed and has failed to do so. Plaintiff's complaint is dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). The Clerk of the Court is directed to close the open motion at ECF No. 53 and this case.

Dated: May 10, 2023
New York, New York

SO ORDERED.



GEORGE B. DANIELS
United States District Judge